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A JUSTIFICATION OF LEGAL EDUCATION IN THE SCHOOLS

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A JUSTIFICATION OF LEGAL EDUCATION IN THE SCHOOLS

by

Pat Robertson Jimenez

Prepared for Duncan Shaw, Chairman
Legal Services Commission
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A JUSTIFICATION OF LEGAL EDUCATION IN THE SCHOOLS

Most of the literature on law-related education in the schools concerns itself with what should be taught in such courses rather than why they should be taught. Clearly, however, the two questions are closely connected, since it is only possible to justify teaching law in the schools in terms of the general objectives to be achieved. To state that the teaching of law is valuable because it develops the students' reasoning skills is futile if, in fact, a course is designed purely to impart information with little or no participation from the students. Both these questions are further linked to the availability of resources (both materials and personnel), as Philip Stenning points out in his article on "Legal Education Beyond the Law School Walls": "... what is to be taught depends almost completely on why it is being taught, who is available to teach it, and what materials are available with which to teach it."[1]

It can be seen, then, that in asking "Why teach law?", we are also asking "What should legal education consist of?" Perhaps it would be instructive at this point to look at the American example. In the 1920's, the American Bar Association, recognizing the widespread public ignorance of the legal system, campaigned to have the Constitution taught in the public schools. As a result of this campaign, forty-three state legislatures passed laws requiring the schools to teach the U.S. Constitution. Legal education in the United States has thus traditionally been equated with education to promote good citizenship. However, as a consequence of studies carried out in the 1960's which showed

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[1] published in The Law Society of Upper Canada Gazette, June 1973, p. 140.

that the method and content of these courses -- rote learning, platitudes, chauvinism -- contributed to an increase in student cynicism and alienation from the legal system, these Civics courses are now generally acknowledged to have been failures.

It was not until the 1960's that national organizations such as the Constitutional Rights Foundation, Law in a Free Society, and Law in American Society began to develop curricula and to initiate law-related education programs in schools. The pace accelerated in the 1970's through the efforts of the American Bar Association's Special Committee on Education for Citizenship, and through greater receptivity on the part of educational administrators and increased student interest in the subject matter proposed.

It is interesting to note that the teaching of law in Ontario high schools, to take another example, has moved in a similar direction, that is from a narrow basis to a much broader one. Courses in business law were introduced into the secondary curriculum after the second World War, with the study of law being seen "as a facet of modern business and as a broadening experience to prepare ... (students) ... for employment."[2] It was not until the fall of 1972 that broadly-based secondary school courses in law were introduced, based on curriculum guidelines issued by the Ontario Department of Education.

The experience in B.C. has been very similar to that of Ontario, with Law 93 available to general program students in the late forties. The text for the course was called Business and Commercial Law. In 1952 the course

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[2] quoted by Stenning in "Legal Education Beyond the Law School Walls" from the Introduction to Law - Senior Division, 1972, p. 4 (published by the Ontario Department of Education, 1972). Philip Stenning is with the Centre of Criminology at the University of Toronto.

was recognized as an option to complete a Social Studies concentration and was thus opened to academic students. The text changed and enrolment increased.

The present course, Law 11, is called Business Law and still emphasizes contracts, property law, etc., although a unit on the legal system is incorporated (a statement of the general objectives of the course is given in the Appendix). However, in practice the course has become much more open-ended, especially with the provision of B.C.-oriented materials through the Schools Legal Education Project. The foreword to the 1975 edition of the guidelines, which have not been revised since 1960, states that "teachers should be aware that the secondary social studies programme is presently under review and it is anticipated that a revision of Law 11 will be undertaken in the near future." The Schools Project is involved with the Ministry in the revision process and has established a province-wide committee of Law 11 teachers to make recommendations to the Ministry on the revision of the course. The committee will be preparing a brief for submission to the Ministry by the end of May.

This brief historical sketch indicates not only how the conception of what should be taught in law courses has changed over the years, but also the concomitant evolution in the raison d'etre for such courses. It would be difficult to justify legal education in the schools in the 1970's except on the basis of this broader-based definition, whose scope will become clearer during the discussion of the reasons for teaching law given later in this report.

Joel Henning, in his article "Law-Related Education: What Works and What Doesn't"[3], describes two inappropriate approaches to the teaching of law which represent at the same time the two common misconceptions as to what constitutes a high school law course. The first is the "Black Letter Law" strategy, in which teachers only teach facts and rules (for example, the penalties for specific offenses). The result is "inert" knowledge, i.e. knowledge that is quickly forgotten and does not lend itself to much application. Such rote learning was seen to be one of the reasons for the failure of the earlier Civics courses in the United States. The effective approach, as Henning points out, is "one in which students are asked to work through legal problems and trouble over their solutions"[4] rather than merely memorize rules.

The second misconception and ineffective approach involves the unquestioning transmittal of values. This method allows no room for student participation and has been shown to be ineffective in accomplishing attitude change and behaviour modification.

Why, then, should law be taught? Two quotes will perhaps provide an answer in general terms. Both note that the law permeates daily life, and that "every consumer purchase, lease, contract, divorce, petty crime, or traffic violation places the layperson face to face with the law. Yet a recently released study (1975) conducted by the U.S. Office of Education indicates that a quarter of the adult population -- 28 million Americans -- is functionally illiterate with respect to their legal rights and responsibilities."[5] This "functional illiteracy" manifests itself among students

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[3] from Susan Davison, ed., Reflections on Law-Related Education.

[4] Ibid., p. 9

[5] "Why Do We Need Law for Laypersons?", from a brochure published by the National Street Law Institute.

as "a widespread lack of understanding of the functioning and effects of our legal system [and] also a distinct distrust of a system they feel operates against them."[6] This ignorance and distrust can be combated only by providing law courses for everyone, and not only within law schools: " ... aspects of legal training, including the development of analytical skills and the capacity for clear thinking, can be modified and adapted for use in elementary and secondary education."[7]

Philip Stenning lists six broad categories covering fairly comprehensively the reasons for teaching law. Most of the reasons advanced by other writers can be fitted into one or another of these categories.

1. The practical reasons.

This category covers the information-providing aspect of teaching law. Basic information on consumer transactions or family law, for example, would be useful for every student. Laura Nader, a Youth Education for Citizenship Advisory Commission member, notes that: "In analyzing thousands of consumer complaint letters it becomes clear that many Americans do not phrase their problems as 'legal problems' either because they do not know they are or because they do not how to use whatever remedy possibilities that the law affords cheaply, such as small claims court. It is astounding that nowhere in the educational system does one get a working knowledge of the law as part of the general education."[8]

By providing information, however, Stenning does not mean that rules should be memorized, or that such information alone is sufficient

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6 "Why Do We Need Law for Laypersons?"

7 Reflections on Law-Related Education, inside cover

8 quoted in Law-Related Education in America: Guidelines for the Future, p. 4.

to justify teaching law. Stenning is careful to emphasize the importance of also teaching students "how much law can change and how [the student] can keep himself informed about such change."[9] He also notes that ignorance of the law is not a defense in law.

A related aspect concerns the reduction of crime and anti-social behaviour. Although Stenning does not specifically mention this as a possible contribution of law-related education, he does point out that one of the traditional justifications for a certain body of law (what he terms penal law) is that its existence acts as a deterrent to control anti-social behaviour in society. In reality, given the statistics on juvenile crime, the deterrent value seems minimal, but this may possibly be attributed to ignorance of and distrust of the law. The President's Commission on Law Enforcement and Administration of Justice in the United States found that 90% of all young people have committed at least one act for which they could be taken to juvenile court. Another study carried out by the same group found that while adults reported five out of ten crimes (already a low figure), young people in the 12 - 19 age group reported only three out of ten crimes. Particularly in the U.S., the crime and disruption has spread to the schools themselves, all of which suggests a widespread cynicism and lack of confidence in the law enforcement system. As the editors of Law-Related Education in America note, "empirical evidence as well as common sense suggest that education which enables young people to understand and deal with the system lawfully will lead to a decline in apathy, anger, and anti-social conduct."[10]

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[9] "Legal Education Beyond the Law School Walls", p. 135

[10] p. 3.

2. The educational reasons.

Most writers have noted that the teaching of legal concepts helps develop students' reasoning skills. Debates and mock trials require logic and clarity in the presentation of ideas and issues, and the skills thus developed can be utilized in other parts of the curriculum and in life beyond the classroom. The development of moral and ethical values is also encouraged, since the students participate in conflict resolution, problem-solving, decision-making and role-taking. This development is related to the social and developmental reasons discussed below.

3. The social reasons.

Stenning notes two aspects of this category. Living in a participatory democracy, Canadian citizens need to have at least a minimal understanding of the basic institutions of government, which in turn requires some basic knowledge of the law, the law-making process, and its relationship to government. These concepts are fundamental to the effective functioning of a democratic society, and students need to be educated in such concepts.

On a secondary level, legal education can fulfill what Stenning terms a "social public relations function". If legal resource personnel such as the police, probation officers, lawyers and law students, judges, etc., are involved in the educational process, the students will gain a better understanding of the functions carried out by such people, instead of seeing police and law enforcement officials in a negative light. A comment made by a student who participated in the Surrey ride-along program

is revealing: "When I was riding in the [police] car, I could feel ... something, not quite hatred, but probably suspicion and maybe feeling I didn't trust them. It really changed my attitude toward the local police."[11]

4. The developmental reasons.

This category concerns law reform. New concepts, such as community law offices, if they are to take root, demand an informed citizenry, capable of assessing such concepts adequately. "There can be no better place in which to start to bring about such changes than in the school, where many of an adult's traditional orthodox understandings and prejudices about the law and its institutions have been learned."[12]

5. The vocational reasons.

Although vocational information is probably not a major function of law-related courses, they do provide an opportunity for students to consider a possible career in the legal profession. Contacts with the police, and other legal resource personnel, may also open up career possibilities which would otherwise be rejected or not considered.

6. The institutional reasons.

"The study of law in schools," says Stenning, "is an ideal vehicle for re-examination of the institution itself, for a greater understanding by the student of his role, and that of his teachers and parents, within the school, and of the various rights and obligations which accrue from being a member of this particular social grouping."[13]

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[11] Wanda Cassidy & Peter Ellis, The Criminal Justice System: from Arrest to Sentencing, p. 21.

[12] Legal Education Beyond the Law School Walls", p. 137.

[13] Ibid., p. 137-8.

Some writers have emphasized other related aspects of the above reasons. Joel Henning emphasizes the necessity for the development of an appreciation of the scope of the law and its effective limits, as well as its powers. John Pittenger points out that the law is one of the two or three most impressive creations of western society, and Charles Koelling sees it as the main factor distinguishing democratic society from the totalitarian nations.[14] The law is often viewed by students as a restrictive force in society rather than a positive force providing the foundation for a free society, and Charles White notes that teaching law helps combat negativism, while admitting that the system is not perfect.

The American Bar Association believes very strongly that law-related education should be available at all grade levels of the school system. "The goal of the ABA Youth Education for Citizenship project is to help develop rigorous, systematic law-related curriculum, kindergarten through twelfth grade."[15] As to whether elementary school children are ready for law teaching, a teacher in Texas felt that "the earlier we start with law-related education, the easier it is to grasp its basic concepts."[16] The film To Reason Why produced by the American Bar Association shows that the use of filmstrips depicting conflicts and the use of games (to show the need for rules) are effective ways of introducing legal concepts in elementary grades. A study mentioned by V. Phillips Weaver showed that children perceive rules and laws as necessary for order; however, they distinguish between fair and unfair rules, and feel laws can be violated when there is

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[14] Henning and Pittenger give their views in Reflections on Law-Related Education. Charles Koelling is quoted in the "Newsletter for Rights and Responsibilities Teachers" published by the Missouri Bar Advisory Committee on Citizenship Education.

[15] Henning, in Reflections on Law-Related Education, p. 9.

[16] quoted by Charles White, "Teaching Kids About Law", Today's Education, February 1977, p. 75.

moral justification. Weaver feels that by introducing concepts of law, order, conflict and dissent to young children, an understanding of democratic government and its processes is fostered." However, students "must experience participation in decision-making to understand [the process]."[17] Further evidence is given by an experimental program in Chicago in which law was taught in both elementary and secondary schools, with a control group at each level who did not receive instruction. "One of the early principal results documented was the development of positive student attitudes towards law enforcement, legal procedure, and legislation and the law, and in this respect the experiment proved to be a great success."[18]

The question that remains to be answered is: Who should be involved in the delivery of legal education? Dr. Loran G. Townsend, Special Education Consultant to the Missouri Bar Advisory Committee on Citizenship Education, has stated: "Society provides many opportunities for an individual to learn, but the school is the central institution which has been created for the specific purpose of promoting learning."[19] However, the educational system cannot function alone in this area. John C. Pittenger, Pennsylvania Secretary of Education, states that "I doubt that a combination of the best teacher, the brightest students and the most brilliant text could achieve that goal [of presenting the complexities and subtleties of legal thought and practice] without the help of lawyers and direct experience in the legal system."[20] Therefore, it follows that "Bar Associations and lawyers are

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17 quoted by Cheryl Matheson, "Law in the Schools", Resource News, Vol. 2. No. 6 (March 1978), p. 18, from V. Phillips Weaver, "Law and Order: Conflict and Dissent in the Primary Grades", Social Education, May 1971.

18 The Hon. Mr. Justice B.J. MacKinnon of the Supreme Court of Ontario, from his introductory remarks to Session I: The Purpose of Law in the School Curriculum, Law in the School Curriculum: A Symposium, p. 9.

19 from "Understanding the Law - An Educational Challenge" in the Journal of the Missouri Bar, March 1973.

20 Reflections on Law-Related Education, p. 7.

natural partners with educational agencies and teachers in the societal goal of effective civic education."[21]

An amusing analogy given by Joel Henning is particularly effective in highlighting the need for legal education in the schools.[22] Henning asks us to imagine a school in which no math is taught. The authorities decide to hold a "Math Day" once a year, when distinguished mathematicians will be invited to speak. When this proves inadequate as far as teaching the students math is concerned, it is decided to invite mathematicians into the classroom so that the students will have an opportunity to ask questions such as "What is four times seven?" However, merely providing the answers does not give satisfactory results, nor does the decision to hold an in-service training program for teachers the following year, so that the teachers themselves can provide the answers. Of course, it is only when the students are required to work through problems themselves that they will begin to acquire mathematical concepts. As with math, so with law, argues Henning. It is also a tool that students must learn to use effectively by working through problems, not by merely memorizing the answers, and it must be taught throughout the school system, as math is, each year building on the concepts learned in the previous grade. Only in this way will all students be given the opportunity to consider some of the fundamental bases of the legal system and democratic society.

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[21] Isidore Starr, Professor of Education, Queens College, The Bar Leader, January-February 1978, published by the American Bar Association, p. 27.

[22] Joel F. Henning, Staff Director, ABA Special Committee on Youth Education for Citizenship, "Law-Related Education: What Works and What Doesn't", Reflections on Law-Related Education, p. 9.

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To Reason Why. Film produced by the American Bar Association, 1972.

Various brochures and newsletters produced by the Missouri Bar Association.

APPENDIX A: SOME KEY EXCERPTS

I. From Law-Related Education in America: Guidelines for the Future, American Bar Association, 1975.

> **Today, when we are confronted with difficult social and political questions—from balancing the need for expanded energy production and the dangers of pollution, to minimizing taxes while providing needed services, to adhering to the judgments of elected representatives while identifying and eliminating those who misuse their authority, to considering the rights of victims while protecting the rights of the accused—those concerned with education must place as much emphasis on teaching legal and moral reasoning skills through law-related education as they currently place on teaching reading, writing, and arithmetic. The school has the greatest claim on young people's time and energy, and no other institution has so great a potential to bring about constructive change in so many profound areas of daily life.**

II. Isidore Starr, "Reflections on Law Studies in the Schools Today", Reflections on Law-Related Education. American Bar Association, 1973.

> This morning you heard a number of speakers discuss the importance of skills in law studies. The holy trinity of skills has been reading, writing, and arithmetic. In addition to these, educators have added speaking and thinking. **It has been my experience that the introduction of law studies in the schools adds a sophisticated dimension to skills development. Law materials, by their very nature, force students and teachers to analyze the issues in value conflicts.**

III. From To Reason Why, a film produced by the American Bar Association, 1972.

> "The more people involved -- police, prosecutors, the Bar, parents -- the more enduring and vital the program."

APPENDIX B: DIFFERENT TYPES OF PROGRAMS

1. The Street Law program in Washington, D.C., uses law students in the classroom.

2. Texas' Law in a Changing Society believes that law education is the responsibility of regular classroom teachers rather than law students, and has introduced law instruction into existing courses rather than establishing a separate course as in the Washington project.

3. Chicago project of the Constitutional Rights Foundation seeks to teach young people about the legal system by involving them in various community projects, following which they share their experiences with teachers and fellow students.

4. Missouri - in this system, the school is seen as the main vehicle for the conducting of legal education, with lawyers and Bar Associations acting as resource personnel. The State Department and the Missouri Bar have collaborated in developing teacher guides and have worked with Missouri colleges and universities to help offer courses to Missouri teachers.

As of 1974, there were over 250 law-related educational projects being carried out in the United States, funded or sponsored in large measure by law schools, state Bar Associations, universities, community groups, and private foundations.

LAW 11

BUSINESS LAW

A course in Business Law is not designed to make lawyers of those who enrol for it any more than a course in first aid is designed to train physicians and surgeons. It should, however, give students an understanding of our legal system, its roots, branches, and fruits; and it should enrich the students' background of social understanding while giving them detailed knowledge which will have personal and vocational value.

General Objectives

To assist the student to understand his legal rights, limitations, and obligations, and to help him to recognize a situation in which he requires the assistance of a lawyer.

To provide a useful background of information that will help the student to understand various situations he is likely to encounter in his business and personal life.

To give the student an appreciation of the part our legal system plays in safeguarding civil rights, preserving order, and facilitating social reform.

To teach students to use Statutes for reference purposes.

APPENDIX D: FROM LAW EDUCATION IN B.C. SECONDARY SCHOOLS: AN IN-DEPTH LOOK AT LAW 11 BY DR. RON PITERS et.al. (1974)

TABLE XIII

TEACHER'S COURSE OBJECTIVES

	Objective	No. of Teachers	% of responses (N=101)
1.	To create an awareness of legal rights, responsiblities and obligations.	30	30
2.	To give the students an understanding of the legal system.	24	24
3.	To give the students an understanding of immediately relevant laws for everyday life.	23	23
4.	To give the students a general overview of law and the legal system.	20	20
5.	To give the students information for living.	15	15
6.	So students understand the need for professional advice.	11	11
7.	To give the students an understanding of laws relevant to later life.	11	11
8.	To instill respect for law.	10	10
9.	To give an introduction to law (as a career objective).	8	8
10.	To give the students an understanding of the legal process.	8	8
11.	To keep the students out of trouble.	6	6
12.	To de-mystify the legal system.	6	6
13.	To teach the principles and history of the legal system.	6	6
14.	Other objectives (each).	45	45